HELMUT KLESTADT

FEBRUARY 21, 1956.—Committed to the Committee of the Whole House and ordered to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 4899]

The Committee on the Judiciary, to whom was referred the bill (H. R. 4899) for the relief of Helmut Klestadt, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to waive sections 15 to 20 of the act entitled "An act to provide compensation for employees of the United States suffering injuries while in the performance of their duties and for other purposes," approved September 7, 1916, as amended (5 U. S. C., secs. 765-770), so as to permit Helmut Klestadt to file a claim with the Bureau of Employees Compensation, Department of Labor, based upon a disability allegedly caused by his employment as a civilian intelligence officer with the Department of the Army.

STATEMENT OF FACTS

Mr. Helmut Klestadt was employed as a civilian intelligence officer by the Department of the Army, European theater, at Frankfurt, Germany, from August 6, 1946, till June 12, 1947. On December 28, 1946, while in the performance of his duties, he was involved in an automobile accident and suffered personal injuries. At the time his injuries were described as "(1) contusion left forehead, mild; (2) hemorrage, subconjunct, left eye, due to the contusion." He was treated by Army personnel, and submitted a report setting forth the details of the accident.

There appeared to be no continuing effects of the injuries in the period immediately following the accident. However, about 3½ years afterward Mr. Klestadt suffered seizures of an epileptic nature.

Mr. Klestadt did file a claim with the Department of Labor, Employee's Compensation Appeals Board. However, despite the fact that the seizures described above did not occur until 1950 the Board held that under applicable law the claim should have been filed within

the limitation period described in section 20 of the act.

It therefore appears to the committee that there has never been a hearing on the merits of this claim. Further it should be noted that from the record it is apparent that Mr. Klestadt was treated by Army personnel, the injuries were officially characterized as minor, and he did not lose any time after return to his home station at the time. Clearly there did not appear to be sufficient basis for a claim in the period immediately following the accident. In view of these facts, the committee finds that Mr. Klestadt should be granted the opportunity to present his claim and have a hearing on the merits. Therefore the committee recommends that the bill be considered favorably.

Re Bureau of Employees Compensation, Washington, D. C. Claimant: Helmut Klestadt. Claim File No. X 754409.

The above filed a claim for an injury sustained, while employed by the Depart-

ment of the Army as an intelligence officer (after discharge from active service), on December 28, 1946. The injury was sustained in line of duty on the return from an operational intelligence mission. The claim, after pending since April 21, 1952, was rejected on March 1, 1954, on the grounds that it was barred by the statute of limitations, namely that no notice of injury was given and that claim was not filed within 1 year, waiver of the limitation provisions being denied.

The facts regarding this are as follows:

The injury, i. e. the impact, occurred on December 28, 1946, in occupied territory, while the claimant was under complete jurisdiction of Army authorities. He was treated by Army element at the scene of the accident, and filed a complete report upon return to his home station, i. e. Frankfurt, Germany. This report, called Serious Incident Report, is dated January 2, 1947, gave complete details of called Serious Incident Report, is dated January 2, 1947, gave complete details of the accident, and is the basis of the CA-2 report requested by the Bureau of Employees Compensation from Frankfurt Military Post after claim was filed with this Bureau. The availability of this report was confirmed by a letter of Headquarters, Frankfurt Military Post, APO 757, United States Army, Civilian Personnel Section, dated July 9, 1952, and claimant believes that this report should satisfy the requirements of Giving of Notice.

After the accident claimant suffered no loss of time after return. He suffered in the suffered was accident claimant suffered no loss of time after return.

visibly only such injuries as did not warrant filing of any claim for compensation. It was only in 1950, i. e. 3½ years of the accident, that claimant became ill, suffering from seizures of an epileptic nature. As attested by the report of my attending physician, Dr. Albert Griesbach, 167-10 Crocheron Avenue, Flushing, N. Y. (report dated July 16, 1952, in possession of Bureau), the precipitating cause for these seizures is the brain injury caused by the impact of the accident of December 28, 1946. This diagnosis has been confirmed by the Bureau's own examining physicians at Public Service Hospital, Staten Island, N. Y., where claimant submitted himself to observation at the specific request of the Bureau between April 13, to April 22, 1953, for a period of 10 days. In view of the fact, that—

(a) The disability did not arise until 1950 and diagnosis thereof took

considerable time

(b) Claim was filed in April 1952, with the Bureau, having been filed in May 1951 with the Veterans' Administration, after disqualification from active Army service;

(c) The Bureau, having all facts turned over to it by the Veterans' Administration took no action until March 1, 1954;

(d) The rejection order is a mere parroting of the statute contrary to the express intent of Congress (92 Congressional Record 5759);

(e) Claim was filed within the statutory limits; claimant respectfully submits that the rejection order of March 1 should be reversed and compensation granted. HELMUT KLESTADT.

DEPARTMENT OF THE ARMY, Washington, D. C., August 27, 1955.

Hon. EMANUEL CELLER, Chairman, Committee on the Judiciary, House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your letter enclosing a copy of H. R. 4899, 84th Congress, a bill for the relief of Helmut Klestadt, and requesting a report on the merits of the bill.

The Department of the Army has considered the above-mentioned bill, which

provides as follows:

"That sections 15 to 20, inclusive, of the Act entitled 'An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes', approved September 7, 1916, as amended (5 U. S. C. 765-770), are hereby waived in favor of Helmut Klestadt for compensation for disability allegedly caused by his employment as a civilian intelligence officer in the Department of the Army, in December 1946, and his claim is authorized and directed to be considered and acted upon under the remaining provisions of such Act, as amended, if he files such claim with the Department of Labor (Bureau of Employees' Compensation) not later than six months after the date of enactment of this Act: *Provided*, That no benefits except medical expenses shall accrue prior to the enactment of this Act."

Helmut Klestadt was employed from August 6, 1946, until the expiration of his contract on June 12, 1947, as a civilian intelligence officer by the Department of the Army, European theater, at Frankfurt, Germany. It appears that on December 28, 1946, while in the performance of his duties, Mr. Klestadt was involved in a traffic accident which resulted in a minor injury for which treatment was obtained at an Army first-aid station. The diagnosis of the injury was (1) contusion left forehead, mild; (2) hemorrhage, subconjunct, left eye, due to the contusion. An X-ray of the skull was negative.

Incident to this accident and injury involving Mr. Klestadt, the Bureau of Employees' Compensation, Department of Labor, on April 26, 1955, advised

the Department of the Army:
"The record shows a claim was filed on May 14, 1952, in connection with this injury and disability allegedly resulting therefrom. The claim was rejected by the Bureau of Employees' Compensation in a compensation order dated March 1,

"The claimant filed an appeal with the Employees' Compensation Appeals Board requesting review of the decision of the Bureau of Employees' Compensation. * * * the decision and order of the Employees' Compensation Appeals Board dated January 26, 1955 [Docket No. 54–423; hearing January 7, 1955; decided January 26, 1955] * * * affirmed the action of this Bureau."

It appears from the foregoing that this case has been considered and determined the statement of the statement

minations have been made by the Department of Labor pursuant to action by the Bureau of Employees' Compensation and the Employees' Compensation Appeals Board. It further appears that the relief sought by the subject bill (H. R. 4899) is in the nature of an appeal from that Department's authorized function and decision. Accordingly, no recommendation is made as to the advisability of enactment of the bill. Inasmuch as this bill, if enacted, would be administered by the Bureau of Employees' Compensation, Department of Labor, it is believed that you may desire the views of the Secretary of Labor with respect to the proposed legislation.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

WILBER M. BRUCKER, Secretary of the Army.

DEPARTMENT OF LABOR, OFFICE OF THE SECRETARY, Washington, October 17, 1955.

Hon. EMANUEL CELLER, Chairman, Committee on the Judiciary, House of Representatives, Washington 25, D. C.

Dear Congressman Celler: This is in further response to your recent request for my comments on H. R. 4899, a bill for the relief of Helmut Klestadt. The bill proposes to waive the time limitations of the Federal Employees' Compensation Act (39 Stat. 742, as amended) in favor of Mr. Klestadt with

respect to the filing of notice of injury and claim for compensation. It would also preclude the accrual of benefits, except medical expenses, for any period

prior to the date of enactment.

Mr. Klestadt suffered a "contusion of the forehead" in an automobile accident on December 28, 1946, while in the performance of his duties as a civilian intelligence officer for the Department of the Army in Germany. Though the Army provided the medical treatment necessary at that time, no written claim for compensation was filed. During 1950 he began experiencing a series of seizures of a convulsive nature, and these seizures are alleged to be causally connected to the head injury he sustained in the automobile accident.

The initial claim for compensation was not filed until May 14, 1952, more than 5 years after the accident in 1946. Since the maximum statutory period for filing these claims is 5 years, the Bureau of Employees' Compensation denied relief on that basis. The Bureau's decision was reviewed and affirmed by the Employees' Compensation Appeals Board on the ground that the statute of limitations began runing at the time of the automobile accident rather than when the seizures b gan. Therefore, the claim has not been considered on its merits.

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Unless the Congress should find extenuating circumstances which justify waiving the time limitations in this case, I would not favor enactment of legislation which would provide preferential treatment of a single individual in a group of

similarly situated persons.

The Bureau of the Budget advises that is has no objection to the submission of this report.

Sincerely yours,

JAMES P. MITCHELL, Secretary of Labor.

UNITED STATES DEPARTMENT OF LABOR

EMPLOYEES' COMPENSATION APPEALS BOARD

In the Matter of Helmut Klestadt and Department of the Army, Frankfurt Military Post, New York, New York. Docket No. 54-423. Hearing January 7, 1955. Decided January 26, 1955

Appearances: Helmut Klestadt, appellant; Philip J. Lesser, Esq., for the Director, Bureau of Employees' Compensation.

DECISION AND ORDER

Before John E. Lawyer, Grace McGerr, Willard H. Shaffer

Appellant was employed from August 6, 1946, until the expiration of his contract on June 12, 1947, as a civilian intelligence officer by the Department of the Army, European Theater at Frankfurt, Germany. On December 28, 1946, while in the performance of his duties, he was involved in an automobile accident resulting in personal injury described in contemporary records as "contusion of the forehead." X-ray examination was negative for skull fracture. Although the employing establishment had actual knowledge of the injury and furnished such medical treatment as was required at the time, and while written notice of the injury may possibly have been contained in the accident report, no written claim was filed at this time. On May 14, 1952, following a series of seizures of a convulsive nature, commencing about 1950, which are attributed with some medical support to the head injury, appellant filed a claim for compensation benefits with the Bureau of Employees' Compensation. The claim was rejected by the Bureau on March 1, 1954, on the ground that it was barred by the limitation provisions of section 20 of the Federal Employees' Compensation Act in respect to the timely filing of written claim. The appeal from this order is based on the general proposition that the time for filing did not commence to run until 1952 when appellant's physician established causal relationship between the injury and his present disability.

The evidence, which need not be set forth here, clearly establishes that appellant was aware of his head injury on December 28, 1946, even though he was

¹ Prior thereto appellant filed a claim with the Veterans' Administration for service-connected disability due to the same condition. Filing of this character does not meet the requirements of the Federal Employees' Compensation Act and is not binding on the Bureau. See In the Matter of James C. Campbell, Docket No. 51–56.

unaware of possible future complications that might arise therefrom. It was a dramatic accident occurring under such conditions that there could not be any question of latent injury and, contrary to appellant's contention, the statutory period for filing written claim commenced to run at that time. Appellant did not file a written claim, however, until 1952, nor did he file any document at any earlier time which can be construed as a claim. The inescapable conclusion, therefore, is that appellant has failed to meet the maximum test of 5 years provided by section 20 of the act. While the Bureau's compensation order states that waiver of the statutory period has been denied, this is error for the 5-year period is a mandatory period which may not be waived by the Bureau nor by this Board regardless of the reasons or circumstances underlying the failure to file within the prescribed period.² However, the error is not prejudicial under the facts of this case and the order of March 1, 1954, will accordingly be affirmed.

ORDER

Upon the findings of the Board and the entire case record filed by the Bureau of Employees' Compensation in accordance with section 501.3 (a), and pursuant to section 501.4 of the Regulations Governing Appeals (20 CFR, Parts 501, 502), the Employees' Compensation Appeals Board hereby orders that—

The Compensation Order issued by the Director, Bureau of Employees' Com-

pensation, dated March 1, 1954, be and it hereby is affirmed.

It is further ordered that the case record be returned to the Bureau.

Dated, Washington, D. C., January 26, 1955.

JOHN E. LAWYER, Chairman.

GRACE MCGERR, WILLARD H. SHAFFER, Members.

² See In the Matters of Eugene W. Broadway, Docket No. 51–154; Kathryn A. O'Donnell, Docket No. 53–334; Duncan F. May, Docket No. 54–69; and William H. Foley, Docket No. 54–113.

